IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Iliyas @ Iliyar Vs. State of Rajasthan
(D.B. Criminal Jail Appeal No.13/2007)

D. B. Criminal Jail Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 5-10-2006 in Sessions Case No.54/2003 passed by Dr. Padam Kumar Jain, RHJS, Sessions Judge Karauli.

Date of Judgment: July 25, 2007.

PRESENT
HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. P.C.Bhandari, Amicus Curiae, for the appellant.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Challenge in this appeal is to the judgment dated October 5, 2006 of the learned Sessions Judge Karauli, whereby the appellants, two in number, were convicted and sentenced as under:-

U/s.302 IPC:
To suffer imprisonment for life and fine of Rs.5000/-, in default to further suffer five months rigorous imprisonment.
U/s.392/397 IPC:
To suffer rigorous imprisonment for five years and fine of Rs.2000/-, in default to further suffer two months rigorous imprisonment
U/s.460 IPC:
To suffer rigorous imprisonment for seven years and fine of Rs.3000/-, in default to further suffer three months simple imprisonment
Substantive sentences were ordered to run concurrently.

2. It is the prosecution case that a written report (Ex.P-6) was lodged by informant Gulab Singh on January 23, 2001 at Police Station Karauli with the averments that in the intervening night of 22 and 23 of January, 2001 at about 2.30 AM certain miscreants trespassed the house of his brother Devi Singh. Hearing noise, Ravi (grand son of Devi Singh) woke up and made attempt to catch hold of miscreants. But the miscreant over powered Ravi and opened fire at him, as a result of which Ravi died instantly. The miscreants took with them a box and other valuable articles. On that report case was registered and investigation commenced. Accused Shabbir and Shahid @ Saiyo @ Tonta were arrested and charge sheet was filed against them. In due course the case came up for trial before the learned Sessions Judge Karauli, who convicted and sentenced Shabbir and Sahid @ saiyo @ Tonta for the offences under sections 302/34, 392 and 460 IPC vide judgment dated April 2, 2003.

3. Investigation against appellant Illiyas was kept pending under section 173(8) CrPC and on his arrest in the month of January,2003 the Investigating Officer further investigated the case and supplementary charge sheet was filed against him. In due course the case came up for trial before the learned Sessions Judge Karauli. Charges under sections 302/34, 392/397 and 460 IPC were framed against the appellant, who denied the charges and claimed trial. In support of its case the prosecution examined as may as 15 witnesses and got exhibited 25 documents. In the explanation under Sec.313 CrPC, the appellant claimed innocence. No witness in defence was however examined. Learned Sessions Judge Karauli on hearing final submissions convicted and sentenced the appellant as indicated above.

4. Having heard rival submissions and on scanning the material on

record we notice that the learned trial Judge while recording the testimony of Meena Devi (Pw.10) ignored the provisions contained in Sections 145 and 155 of the Indian Evidence Act. The appellant was not provided opportunity to confront Meena Devi with her earlier statement recorded in Sessions Case No.55/2001. This is evident from the order sheet drawn by learned trial Judge on March 14, 2005, which reads as under:-

> "पीपी उपस्थित। अभियुक्त इलियास जेसी से उपस्थित।
> PW-10 मीना देवी PW-11 पंचम सिंह का बयान लिया गया। पत्रावली नियत दिनांक 15-3-05 को पेश हो। माल वजह सबूत डबल लोक वापिस किया गया।
> गवाह PW-10 मीना के बयानों के दौरान अभिभाषक अभियुक्त ने पूर्व में मुलजिम शब्बीर और शहीद के विरूद्ध प्रकरण में दिये गये बयानों से विरोधाभाष प्रदर्शित कराना चाहा। उक्त विषय में प्रार्थना पत्र पेश किया, जिसकी पुश्त आदेश पारित कर disallowed किया गया। प्रार्थना पत्र शामिल पत्रावली हो।"

5. At this juncture, it will be appropriate to refer Section 145 and 155 of Indian Evidence Act which read thus:-

> "145. Cross-examination as to previous statements in writing.- A witness may be cross examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.
> 155. Impeaching credit of witness. The credit of a witness may be impeached in the following ways by the adverse party, or with the consent of the Court, by the party who calls him:-
>
> (1) By the evidence of a persons who testify that they, from their knowledge of the witness believe him to be unworthy of credit;
>
> (2) By proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence;

(3) By proof of former statements inconsistent with any part of his evidence which is liable to be contradicted."

6. Interpreting Sections 145 and 155 their Lordships of the Supreme Court in Binay Kumar Singh Vs. State of Bihar (AIR 1997 SC 322) indicated thus:-

> "The credit of a witness can be impeached by a proof of any statement which is inconsistent with any part of his evidence in court. This principle is delineated in Section 155(3) of the Indian Evidence Act and it must be borne in mind while reading Section 145 which consists of two limbs. It is provided in the first limb of Section 145 that a witness may be cross examined as to the previous statement made by him without such writing being shown to him. But the second limb provides that if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those part of it which are to be used for the purpose of contradicting him. There is thus a distinction between the two vivid limbs, though subtle it may be. The first limb does not envisage impeaching the credit of a witness, but it merely enables the opposite party to cross examine the witness with reference to the previous statements made by him. He may at that stage succeed in eliciting materials to his benefit through such cross examination even without resorting to the procedure laid down in the second limb. But if the witness disowns having made any statement which is inconsistent with his present stand his testimony in court on that score would not be vitiated until the cross examiner proceeds to comply with the procedure prescribed in the second limb."

7. Section 145 gives right to cross examine a witness on previous statements made by him and reduced into writing, when these previous statements are relevant to the matter in issue, whereas Section 155(3) provides that the credit of witness may be impeached by proof of former

statements inconsistent with any part of his evidence which is liable to be contradicted. In view of these provisions the appellant had a right to confront Meena Devi from her previous statements made by her in Sessions Case No.55/2001. In depriving the appellant of such right failure of justice have been occasioned to him.

8. The error committed by learned Sessions Judge Karauli in not complying with the provisions of Sections 145 and 155 Evidence Act is so gross that it has prejudiced the case of the appellant and we in view of Section 465 CrPC have no option but to reverse the impugned judgment of learned trial Judge.

9. For these reasons, we allow the appeal and set aside the impugned judgment dated October 5, 2006 and remit the case back to learned Sessions Judge Karauli with the direction to provide opportunity to appellant in view of Sections 145 and 155 Evidence Act to cross examine the witnesses Meena Devi and Yashpal or any other witnesses whose statements were earlier recorded in Sessions trial bearing case No.55/2001 and complete the trial as per law within two months from the date of receipt of this order. The appellant is directed to appear before the Sessions Judge Karauli on August 6, 2007.

(Guman Singh),J. (Shiv Kumar Sharma)J.

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